

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JACKIE HEIB,)	No. 24094-1-III
)	
Respondent,)	
)	
v.)	
)	Division Three
DEPARTMENT OF LABOR AND)	
INDUSTRIES OF THE STATE OF)	
WASHINGTON,)	
)	
Petitioner.)	UNPUBLISHED OPINION

KATO, J.— Jackie Heib appealed a decision of the Board of Industrial Insurance Appeals (Board). The trial court dismissed the appeal for lack of subject matter jurisdiction because Ms. Heib did not serve her notice of appeal on the Board and the Department of Labor and Industries (Department) within 30 days of receiving notification of the Board’s ruling as required by RCW 51.52.110. The court subsequently granted her motion for reconsideration on the ground that she had substantially complied with the procedural requirements of the statute. Contending Ms. Heib neither strictly nor substantially complied with RCW 51.52.110, the Department appeals. We reverse.

On April 28, 2000, Ms. Heib injured her arm and shoulder while working as a cashier for Ron's Stop & Shop in Colville. Her injuries left her unable to work. On June 26, she applied for benefits with the Department. On July 31, the Department accepted Ms. Heib's claim and began paying benefits.

On January 17, 2003, the Department closed her claim. She appealed to the Board. On April 6, 2004, the Board's industrial appeals judge issued a proposed decision and order affirming the Department's decision.

Ms. Heib then filed a petition for review. On June 14, 2004, her lawyer received the Board's order denying her petition. The order contained this language: "Any party aggrieved by this order must, within thirty (30) days of the date the order is received, file an appeal to superior court in the manner provided by law." Clerk's Papers (CP) at 5.

On July 7, 2004, Ms. Heib attempted to file a notice of appeal and demand for jury trial with the Stevens County Superior Court. She included a \$225 check for filing and jury fees. This amount was incorrect and should have been \$235. On July 12, the court administrator informed Ms. Heib's lawyer of the error. On July 13, the additional \$10 was sent to the court and the documents were filed.

On July 16, the lawyer's office for Ms. Heib received conformed copies of the notice of appeal and demand for jury trial. Her lawyer was out of the office.

No. 24094-1-III
Heib v. Dep't of Labor & Indus.

Upon his return on July 19, he served the Department, the Board, the Office of the Attorney General, and the assistant attorney general with conformed copies of the notice of appeal and demand for jury trial.

On September 14, the Department moved to dismiss Ms. Heib's appeal for lack of subject matter jurisdiction because of untimely service of the notice of appeal on the Board and the Department. On October 26, the court dismissed her appeal. She filed a motion for reconsideration, which was granted on the ground that she had substantially complied with RCW 51.52.110 and the Department was not prejudiced by the late service. We granted discretionary review.

The Department contends Ms. Heib failed to invoke the superior court's appellate jurisdiction because of untimely service. *Fay v. Nw. Airlines, Inc.*, 115 Wn.2d 194, 197, 796 P.2d 412 (1990). The superior court's statutory appellate jurisdiction is limited. *Tech. Employees Ass'n v. Pub. Employment Relations Comm'n*, 105 Wn. App. 434, 438, 20 P.3d 472 (2001). A party must thus follow all statutory procedural requirements to properly invoke that jurisdiction. *Id.*

RCW 51.52.110 establishes the procedure for appealing from the Board's decisions:

Within thirty days after a decision of the board . . . [an] employer or other person aggrieved by the decision and order of the board may

appeal to the superior court. If such worker, beneficiary, employer, or other person fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board to deny the petition or petitions for review or the final decision and order of the board shall become final.

. . . Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board.

Requiring service ensures that all parties are notified of the appeal. *In re Saltis*, 94 Wn.2d 889, 895, 621 P.2d 716 (1980).

RCW 51.52.110 does not expressly require both filing and service within 30 days. *Fay*, 115 Wn.2d at 198. But that is the interpretation by the courts.

Herdandez v. Dep't of Labor & Indus., 107 Wn. App. 190, 197, 26 P.3d 977 (2001). Ms. Heib's notice of appeal should have been filed and served within 30 days of June 14, 2004, the date her lawyer received the Board's order. The deadline for perfecting the appeal was therefore July 14, 2004. Although Ms. Heib timely filed the notice of appeal, she did not serve the Board or the Department until July 19, 2004.

Compliance with the statutory procedure in RCW 51.52.110 can be either strict or substantial in order to invoke the superior court's appellate jurisdiction. *Saltis*, 94 Wn.2d at 896. Generally, substantial compliance is defined as actual compliance with the "substance essential to every reasonable objective" of a

No. 24094-1-III
Heib v. Dep't of Labor & Indus.

statute. *Cont'l Sports Corp. v. Dep't of Labor & Indus.*, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996) (quoting *City of Seattle v. Pub. Employment Relations Comm'n*, 116 Wn.2d 923, 928, 809 P.2d 1337 (1991)). Noncompliance is not substantial compliance. *Crosby v. Spokane County*, 137 Wn.2d 296, 302, 971 P.2d 32 (1999).

With statutory time limits, there cannot be substantial compliance. *City of Seattle*, 116 Wn.2d at 929. A party acts either before or after a time limit. *Id.* at 928-29. Therefore, substantial compliance will not turn late service into timely service. *Id.* at 929.

Here, Ms. Heib's service on all the necessary parties was accomplished on July 19, 2004, five days after the deadline. The minimum necessary for substantial compliance with the service requirement is that the party to be served must receive actual notice of the appeal to superior court, or service by a method reasonably calculated to succeed. *Saltis*, 94 Wn.2d at 895-96. Substantial compliance still requires actual, even if ineffective, compliance with statutory requirements. *Petta v. Dep't of Labor & Indus.*, 68 Wn. App. 406, 409, 842 P.2d 1006 (1992), *review denied*, 121 Wn.2d 1012 (1993). There was no attempt by Ms. Heib to serve anyone before July 19. In these circumstances, she did not strictly or substantially comply with the statute.

Ms. Heib nonetheless argues the late service should be excused because the delay was caused by the miscommunication about the correct amount of the fees to be paid. Indeed, this mistake may have delayed service of conformed copies. But service of any copy of the notice of appeal would have been acceptable. She did not comply with the statute's requirements.

Pursuant to RAP 18.1 and RCW 51.52.130, Ms. Heib requests costs and fees on appeal. RAP 18.1 allows reasonable attorney fees. RCW 51.52.130, however, requires a worker to prevail in order to recover fees and costs on appeal. Ms. Heib has not prevailed. Her request is accordingly denied.

Reversed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kato, J.

WE CONCUR:

Sweeney, C.J.

Brown, J.